

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 163 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

K K PATEL

Versus

STATE OF GUJARAT

Appearance:

MR BS PATEL for Petitioner
Mr. T.H. Sompura, PUBLIC PROSECUTOR
for Respondent No. 1

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 19/03/99

ORAL JUDGEMENT

The learned advocate representing the petitioner seeks permission to delete opponent No.2. Permission granted. Rule. Mr. T.H. Sompura, learned A.P.P. waives the service of Rule.

2. By this application, the petitioner, who is released on bail by the learned Additional Sessions Judge, Mehsana, imposing certain conditions, prays for necessary modification thereof as certain conditions are harsh, fanciful, unjust and contrary to the provisions of

law.

3. In short, it is the case of the petitioner that a complaint of the offences punishable under Section 138 of the Negotiable Instruments Act came to be filed against him in the Court of learned Judicial Magistrate (F.C.), at Visnagar. On being served with the summons, he appeared before the Court and used to remain present before the Court as and when the case was fixed for hearing, but once he did not remain present. The learned Judicial Magistrate (F.C.) therefore issued non-bailable warrant. Pursuant to the execution of the warrant he was arrested. The learned Magistrate refused to release the petitioner on bail when he moved the Court for bail. Hence the matter was carried to the Sessions Court at Mehsana filing Revision Application No. 35/99 which was assigned to the then learned Additional Sessions Judge, Mehsana, who hearing the parties allowed the same and released the petitioner on bail but imposing certain conditions which would virtually amount to denial of the bail. As per one of the conditions, he is directed to pay a fine of Rs. 1,000/-, and under another condition, he is directed to deposit Rs. 20,000/- over and above execution of the bond of Rs. 10,000/-. Feeling aggrieved by such harsh and penal order, the present revision application has been preferred.

4. What type of bail order should be passed and what conditions should be imposed while releasing the accused on bail was the question raised before this Court in the case of Bhikhabhai Udesinh Darbar Vs. State of Gujarat XXXIX (1) [1998 (1)] G.L.R. 315, wherein it is laid down that freakish condition cannot be imposed which would amount to levy of penalty and denial of the bail. Reading the impugned order, copy of which is produced at Page 1, it seems the learned Additional Sessions Judge has missed to take note of this decision rendered by this Court, wherein it is observed;

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" No doubt the Court having regards to the facts and circumstances of the case can impose necessary, just and efficacious conditions assessing the situation, but the powers of the Court are not unfettered. The accused cannot be subjected to any condition, or extravagant or irrelevant conditions the Court at its fancy wants to impose. The conditions contemplated in

Sec. 437 (3), 438, 439 or 445, Cri.P. Code, 1973 whichever is applicable to the case, or the conditions contemplated by other provisions of applicable special law governing the field alone can be imposed. The conditions must, therefore, have a reference to those necessary in the interest of justice, or securing accused's presence at the trial, and his receiving judicial verdict, or preventing him from fleeing or watching and checking his activities injurious to the interest of prosecution, or the requirements of an uninterrupted investigation, or inhibiting the accused from inducing or intimidating the witnesses so as to dissuade them from disclosing the facts before police and Court or restricting accused's movements in a particular area or locality, or maintenance of law and order, or larger interest, or accused's safety or safety of others, or prevention of recurrence of any crime or of incident a subject-matter of investigation and the like. To subject the accused to any other conditions beyond the jurisdiction or power or freakish condition will be repugnant to law. The Court must, therefore, be extremely chary and should not transgress its jurisdiction or power and pass the order contrary to law; or the other causing injury to accused or any party, or operating as an engine of oppression. Further, the conditions imposed must not be harsh, onerous or excessive so as to frustrate the very object of bail, or indirectly deny the bail, or protection of law. In other words, every Judge has to observe self-restraint and pass the order strictly remaining within the four corners of law. He cannot be overzealous. However laudable ideology or philosophy he may have inculcated and fostered; and cultivated a craze or fancy for the same, he cannot give vent to his ideology or philosophy in the order he is passing if the same is not in consonance with law or powers he is having in law, but being obsessed with the same if it is made the base of the order, it would tantamount to tainting the order with extraneous consideration transgressing one's own limits or powers, and that would make the order a freak, or make the order penal, unjust, unfair, arbitrary or capricious and illegal causing injury and injustice to the accused being negation to his rights and liberty."

to say that in view of the decision in Bhikhabhai Udesinh Durbar (Supra), the aforesaid two conditions imposed are certainly harsh, illegal and unjust, maintenance of which will certainly operate as an engine of oppression. The same being contrary to law are required to be struck off.

6. For the aforesaid reasons, this revision application is allowed. The direction to deposit Rs. 1,000/- as fine and further direction to deposit Rs. 20,000/- in the lower court at the time of executing the bond are hereby struck off. Rest of the order is maintained. Rule is accordingly made absolute. Direct service is permitted.

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(rmr).